Remarks

Claims 1-6 and 9-20 are pending.

The office action rejected claims 1-6 and 9-20 under 35 U.S.C. § 103(a) as unpatentable over Blackard et al. (U.S. Pat. No. 5,918,020) in view of Schuster et al. (U.S. Pat. No. 6,360,271) and further in view of Borella (U.S. Pat. No. 6,434,606).

Applicant respectfully disagrees on the grounds that Blackard does not teach, show or suggest a burst path, nor a second buffer for a burst path; Schuster does not teach, show or suggest a burst path, nor a second buffer for a burst path; Borella does not teach, show or suggest a server for transmission, being directed to buffer management on a client, nor a burst transmission path; and the combination of references is also invalid.

Blackard discloses a communication system 100 in which a client 108 is able to retrieve information from a plurality of information servers 102. As information is transmitted to client 108 from server 102, the client communicates back to the server 102 with a 'Pace Message' indicating that the client's buffers require pacing on the part of the transmission from the server. See Blackard, col. 9, line 66, through col. 10, lines 25. The server then stops transmission until the wait interval that allows the client to empty its buffers has passed. See col. 10, line 15-20. See also, col. 6, lines 7-31.

There is no second transmission path in Blackard, much less a burst transmission path. See Figure 2 for a detailed description of the information server in Blackard. Further, as there is no second or burst transmission path in Blackard, there is no buffer in that path. Applicants agree with the statement in the office action that Blackard does not explicitly disclose a switch for selection to transmit data from one of the regular path, and the initial burst path. The office action relies upon the addition of Schuster in combination with Blackard to teach a burst transmission path.

Schuster does not teach a burst transmission path, or a second buffer in the burst transmission path. In the text referenced by the office action, Schuster merely makes references that one of many paths may be taken. This path would constitute a 'regular' path. Nowhere does Schuster mention having two paths. Claim 1, as amended, requires that the burst path be, "distinct from the first path at least in part." Schuster does not have a second path, because, even if an analysis was done and a faster path was found, *that path is the first path*. No burst path exists in Schuster. Further, there is no second buffer in Schuster. See Figure 2 of Schuster, item

12, *Transmitter*. Applicants agree that the combination of Blackard and Schuster does not disclose a burst path or a second buffer.

Borella does not disclose a burst path or a second buffer at the transmitting end, either. Borella discloses a buffer management system on the *receiving end* of a transmission path. The buffer management module selects one playout buffer from a bank of buffers, based upon how quickly that buffer can feed the data to the encoder. See Borella, col. 11, line 66 through col. 12, line 5. "Based on this evaluation, a computationally-desirable jitter buffer is selected for a given time period. The selected jitter buffer then acts as a 'real' jitter buffer for the given time period, thereby passing any buffered frames to the decoder 518 for playout. It is only the computationally-desirable or real jitter buffer that forwards frames to the decoder." Borella, therefore, discloses a method of selecting a playout buffer at the receiving end, and only one playout buffer is selected. Borella does not disclose a second buffer at the transmission end, nor a burst path. See also Figure 1 of Borella, item 502. Therefore, Borella does not cure the deficiencies of the combination of Blackard and Schuster set out above.

Further the combination of references is invalid. In order for a combination of references to be valid, there must be some suggestion or motivation to combine the reference teachings. No such motivation exists in this combination. Blackard teaches a transmission protocol with a pacing feedback mechanism. Such pacing mechanism would not require or benefit from the possibility of using a different transmission path in Schuster. Further, Schuster, having the capability to select one of many available transmission paths has no need for a pacing feedback mechanism. Similarly, neither Schuster nor Blackard have any need for a second or burst transmission path, if Borella were to teach such a path. Borella, being directed to a receiving client, has no need or use for a pacing mechanism at transmission or is there any relevance to the ability to select one of many transmission paths. No motivation exists to combine these teachings and therefore the combination of references is invalid.

As amended, claim 1 requires *a burst path for transmitting data received from the source at a burst rate higher than the regular rate before playout at the client distinct from the regular path at least in part; a second buffer in the burst path for buffering data from the source prior to transmission to the client.* As discussed above, the combination of references does not show, teach or suggest these elements of claim 1.

As amended, claim 9 requires *means for buffering the first portion prior to transmission to a client and outputting the buffered first portion to the client on the network through the first path at a first rate before playout at the client; means for receiving a second portion of the streaming media from the source prior to transmission to the client along a second path distinct from the first path at least in part...* As discussed above, the combination of references does not show, teach or suggest these elements of claim 9.

As amended, claim 15 requires *buffering the first portion prior to transmission to a client and outputting the buffered first portion to the client on the network through the first path at a first rate before playout at the client; receiving a second portion of the streaming media from the source prior to transmission to the client along a second path of the server distinct from the first path at least in part.* As discussed above, the combination of references does not show, teach or suggest these elements of claim 15.

Claims 2-6 depend from claim 1, claims 10-14 depend from claim 9 and claims 16-20 depend from claim 15. These claims inherently contain all of the limitations of their respective base claims. As discussed above, the prior art does not teach, show nor suggest all of the limitations of the base claims, much less the further embodiments of the dependent claims.

It is therefore submitted that claims 1-6 and 9-20 are patentably distinguishable over the prior art and allowance of these claims is requested.

No new matter has been added by this amendment. The prior art made of record but not relied upon has been reviewed and is not deemed pertinent to the Applicants' disclosure. Allowance of all pending claims is requested. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Customer No. 20575

Respectfully submitted,

MARGER JOHNSON & McCOLLOM, P.C.

Julie L. Reed

Julie L. Reed
Registration No. 35,349

210 SW Morrison Street, Suite 400
Portland, OR 97204
503-222-3613